

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Improving Public Safety Communications in)	WT Docket 02-55
the 800 MHz Band)	
)	
Consolidating the 800 and 900 MHz)	
Industrial/Land Transportation and Business)	
Pool Channels)	
)	
Amendment of Part 2 of the Commission's)	ET Docket No. 00-258
Rules to Allocate Spectrum Below 3 GHz for)	
Mobile and Fixed Services to Support the)	
Introduction of New Advanced Wireless)	
Services, including Third Generation Wireless)	
Systems)	
)	
Petition for Rule Making of the Wireless)	RM-9498
Information Networks Forum Concerning the)	
Unlicensed Personal Communications Service)	
)	
Petition for Rule Making of UT Starcom, Inc.,)	RM-10024
Concerning the Unlicensed Personal)	
Communications Service)	
)	
Amendment of Section 2.106 of the)	ET Docket No. 95-18
Commission's Rules to Allocate Spectrum at 2)	
GHz for use by the Mobile Satellite Service)	
 To: Michael J. Wilhelm, Chief Public Safety and Critical Infrastructure Division Wireless Telecommunications Bureau		

COMMENTS SUPPORTING REQUEST FOR CLARIFICATION

Midwest Management, Inc., Brenda Weron, John Weron, Raymond Lawrence, and Joellen Lawrence (collectively, the "Midwest Licensees"), through counsel and pursuant

to Section 1.41 of the Commission's Rules, 47 C.F.R. §1.41, hereby respectfully file these comments in support of the Request for Clarification filed May 4, 2005, by Communications & Industrial Electronics, Inc. ("C&I"), and North Sight Communications, Inc. ("North Sight", collectively with C&I, the "Requesters"), seeking clarification from the Commission regarding obligations imposed on "Upper 200" Incumbents under the Commission's December 22, 2004, Order in WT Docket No. 02-55 (the "Supplemental Order"),¹ which modified the Commission's earlier July 8, 2004, Order (the "Primary Order", collectively with the Supplemental Order, the "Orders").²

The Midwest Licensees agree with the Requesters' assertion that the Commission intended for incumbent Upper 200 site-based licensees to remain on their current frequencies with the grandfathered ability to maintain non-ESMR operations. Therefore, the Midwest Licensees agree that the 800 MHz Transition Administrator's ("TA") interpretation of Section 90.614 of the Commission's Rules erroneously imposes mandatory relocation obligations on the Midwest Licensees, and clearly runs counter to the intent of the Commission as expressed in the Orders.

As such, the Midwest Licensees respectfully endorse the Requesters' Request that the Commission issue an Order clarifying its intent on this provision and correcting the obvious and material interpretative error of the TA.

¹ Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, *Supplemental Order and Order on Reconsideration*, 34 CR 871 (2004) (the "Supplemental Order").

² Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, *Report and Order, Fifth Report and Order, Fourth Memorandum and Order, and Order*, 19 FCC Rcd 14969 (2004) (the "Primary Order").

I. INTRODUCTION

Like the Requesters, the Midwest Licensees are incumbent 800 MHz SMR licensees and operators, holding incumbent licenses in the 861-866 MHz Upper 200 block which were not relocated by the EA licensees during mandatory relocation of that band, and also holding site-based incumbent licenses in the 854-861 MHz channel block which are not subject to mandatory relocation under the Orders.

The Midwest Licensees participate together in the operation of a wide-area traditional SMR network covering parts of North Dakota, South Dakota and Minnesota with network operations managed by Jamestown Communications, Inc. (“Jamestown”), an affiliated entity, experienced Part 90 system operator and 800 MHz EA license holder.³ Using a combination of the Jamestown EA licenses and the Midwest Licensees’ site-based licenses, Jamestown markets traditional multi-site SMR service in a vast rural area, and its customers rely on the multiple transmitter sites to maintain communications as they conduct their business across the network service territory, which is underserved by cellular and PCS networks. As such, the Midwest Licensees have made a considerable investment in their network architecture, and have no business plans to construct a “high-density cellular network” as defined in the Commission’s newly-adopted rules.⁴ The Midwest Licensees desire to continue to conduct their current SMR business, while avoiding any unnecessary disruption to their customers’ communications service.

³ Jamestown Communications, Inc., is the A-block EA license holder in EA 113 (Fargo-Moorhead, ND; WPLM206) and EA 114 (Aberdeen, SD; WPLM207). By letter dated May 13, 2005, to the TA (and on file with the Commission), Jamestown declined a voluntary move to the ESMR Block and elected to retain its current licenses and frequencies in the Guard Band.

⁴ A “high-density system which: (1) has more than five overlapping interactive sites featuring hand-off capability; and (2) any one of such sites has an antenna height of less than 30.4 meters (100 feet) above ground level with an antenna height above average terrain (HAAT) of less than 152.4 meters (500 feet) and twenty or more paired frequencies.” 47 C.F.R. §90.7.

Therefore, the Midwest Licensees are adversely impacted by the provisions of the Orders which, as interpreted by the TA, may require the Midwest Licensees to face mandatory relocation of their systems without reimbursement or compensation, or alternatively would impose operating restrictions which would prohibit the Midwest Licensees' present operations. The Midwest Licensees support the Requesters' assertion that the TA's interpretation of the Commission's intent of this provision is in error.

II. DISCUSSION

1. The Commission did not provide for mandatory relocation or compensation of Upper 200 incumbent licensees in either the Primary Order or the Supplemental Order, and the Midwest Licensees cannot be expected to relocate without compensation.

As the Requesters have noted, the Commission did not expressly provide compensation for the purported mandatory relocation of Upper 200 SMR incumbents. If the TA is to force the relocation of the Midwest Licensees without mandatory compensation, such an unfunded mandate could bankrupt the Midwest Licensees and Jamestown. These small, community-based and family-owned businesses collaborate to provide steady service to approximately 600 customers across a vast, sparsely populated area, so the reprogramming of each customer unit will be an expensive and time-consuming proposition beyond the financial means of the Midwest Licensees and Jamestown. Their financial insolvency would lead to a reduction or loss of vital communications service to business, industrial and public safety users in a rural area with few other wireless communications alternatives.

2. Upper 200 incumbents are entitled to protection from EA licensees, so relocation of the Midwest Licensees is not necessary to prevent harmful interference.

In the Commission's Upper 200 Proceeding, EA licensees were granted the right to relocate incumbent licensees in their EA channel block on a mandatory basis *if and only if* the auction winner paid or reimbursed all reasonable cost of relocation and provided the licensee comparable facilities elsewhere in the 800 MHz band.⁵ As the requesters noted, any incumbent licensees not relocated by the EA licensees were entitled to indefinite full interference protection, with strict technical limitations placed on the EA licensee's adjacent operations.⁶

As the EA licensee for the B-Block and C-Block licenses across the Midwest Licensees' service territory, Nextel Communications, Inc. ("Nextel"), provides only limited iDEN network service.⁷ It presumably made the business decision that it could successfully operate its network in the Upper Midwest while protecting the Midwest Licensees and other similarly affected incumbents, and the same will be true after rebanding. Because of the low population density of this area, Nextel and its affiliates apparently have little need to operate the type of high-capacity low sites which create harmful interference to nearby traditional SMR operations. In the extremely unlikely event of harmful interference from CMRS systems, the Interference Abatement procedures established by the Primary Order will provide sufficient protection to the

⁵ 47 C.F.R. §90.699.

⁶ Request for Clarification, Communications & Industrial Electronics, Inc., and North Sight Communications, Inc., May 4, 2005, at 10 ("Clarification Request"); *Auction of 800 MHz Specialized Mobile Radio Service Licenses*, 13 FCC Rcd 1875 (1997) at 3; 47 C.F.R. §90.699(e); 47 C.F.R. §90.691.

⁷ Such service is provided through the combined operations of Nextel and its operating partners Nextel Partners, Inc. and Extend America.

Midwest Licensees.⁸ Incumbent ESMR licensees in the non-cellular block are provided an opportunity to remain on their current frequencies on a non-interference basis, and the Midwest Licensees are simply seeking similar treatment. A forced relocation of the Midwest Licensees by the TA would seek to solve a harmful interference problem which simply does not exist in these markets.

3. Absent a forced relocation from the 862-866 MHz band, Incumbent Licensees have no relocation obligations and would otherwise avoid all customer disruption.

In the difficult task of balancing conflicting interests while structuring the rebanding process contained in the Orders, the Commission sought to limit the “hardship” caused by rebanding to the minimum required “as a necessary concession to the nation’s overall Homeland Security obligations,”⁹ in order to impose “a solution that is both equitable and imposes minimum disruption to the activities of all 800 MHz band users.”¹⁰ It is the intent of the Commission (and, presumably by extension, the TA as an agent of the Commission) not to reprogram one radio more than is absolutely necessary to prevent future harmful interference. Because the Midwest Licensees hold no frequencies in the 851-854 new NPSPAC Block, they would not be subject to mandatory relocation absent this misinterpretation by the TA. Therefore, under the TA’s interpretation, approximately 600 radio users would suffer the significant disruption of radio reprogramming to solve a problem which does not even exist in their geographic area. This is not the Commission’s intent.

⁸ See, generally, Primary Order at ¶¶92-141.

⁹ Primary Order at ¶339.

¹⁰ Id. at ¶2.

IV. CONCLUSION

For all of the reasons set forth above, the Midwest Licensees agree with the Requesters' assertion that the TA's April 21, 2005, press release imposing mandatory relocation obligations on the Midwest Licensees focuses on a narrow interpretation of a single rule section and misinterprets the Commission's clear intent in this matter.

Therefore, the Midwest Licensees respectfully request that the Commission issue an Order on its own motion clarifying and correcting the obvious and material misinterpretation of this provision by the 800 MHz Transition Administrator.

Respectfully submitted,

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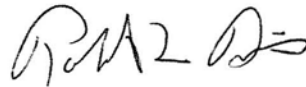
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CERTIFICATE OF SERVICE

I, Robert L. Ritter, an attorney in the law offices of Shulman, Rogers, Gandal, Pordy & Ecker, P.A., do hereby certify that I have on this 23rd day of May, 2005, sent via First Class, United States Mail, postage prepaid, a copy of the foregoing Comments to the following:

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A handwritten signature in black ink, appearing to read 'RLR', followed by a stylized flourish.

Robert L. Ritter, Esquire